

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5050 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMADBHAI @ MUNNO GAGJIBHAI MIYANA : Petitioner.

Versus

COMMISSIONER OF POLICE & Ors.: Respondents.

Appearance:

MS DR KACHHAVAH for Petitioner

Mr. S.P. Dave, AGP for the respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/12/97

ORAL JUDGEMENT

The petitioner, by this application under Article 226 of the Constitution of India, calls in question the legality and validity of the detention order dated 4th July 1997, passed against him invoking the powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter be referred to as the "Act") so as to prevent him from carrying out his anti-social activities the challenge to the public order.

2. The facts which led the petitioner to prefer this

petition may in brief be stated. The Police Commissioner at Rajkot knew that the petitioner was the head-strong person. He was considered to be hector and yahoo by the society and his horrifying activities going berserk were required to be curbed. It was also noticed that about 7 complaints of the offences punishable under Section 454, 457, 380, 302, 307 read with Section 149, I.P.C. were lodged with 'B' Division police station of the city of Rajkot. Having come to know about such complaints when the Commissioner of Police deeply inquired he found that the petitioner was the head-strong person and was by his nefarious activities creating panic in the society the challenge to the maintenance of public order. The petitioner used to extort money by giving threats or resorting to coercive measures, and those who did not yield to his desire they were assaulted & beaten brutally and were then made to succumb to his desire. The people worrying about their safety were not coming forth to lodge the complaints and have the action in accordance with law. Hearing about the petitioner or seeing him the people used to chey, as they were feeling insecure. The Police Commissioner then found that to curb the anti-social activities of the petitioner there was no way out but to detain him as under general law sounding dull it was difficult to control his activities taking appropriate action. He therefore passed the order in question on 4th July, 1997. Consequent upon the same the petitioner came to be arrested.

3. The petitioner has challenged the leglity and validity of the order on different grounds. According to him he is not a head-strong person or a dangerous person. Just to prejudice his case he has been accordingly described. The particulars of the witnesses giving statement against him ought to have been furnished to him so as to make effective representation, but under the guise of the privilege under Section 9(2) of the Act the same were suppressed. The privilege exercised was not according to sound principles of law but it was arbitrary and perverse so as to deprive him of his right to make effective representation, and also see that he did not succeed in future in challenging the order. He was in all the above cases released on bail by the court but the bail application and order passed pertaining to the Crime Register No. 227/96 were not supplied to him. With the result, his right to make effective representation was injured. Against such submission, Mr. Dave, the learned A.G.P. submitted that the order was not at all defective. It was quite in consonance with law and no error was committed by the authority passing the order. Necessary papers were supplied and on the basis of the

statements recorded and complaints registered with the police stations there was a reason to believe that the petitioner was a head-strong person and by his nefarious activities he was terrorising the people. With the result the people had developed a feeling of insecurity because of impending danger of violence. The privilege exercised was also just and proper. The particulars were not supplied with a view to keep the identity of the witnesses secret so that the witnesses might not in future be put to perilous situation. The disclosure of those particulars therefore being against the public interest, the same were not furnished to the petitioner. He then urged to uphold the order and dismiss the petition.

4. This application can well be disposed of dealing with the only point going to the root of the case and it is about non-supply of certain papers & particulars to the petitioner. As this point going to the root of the case, I do not think it necessary to dwell upon other grounds deal with the same in detail and determine the same.

5. The Apex Court in the case of M. Ahamed Kutty vs. Union of India & Another - (1990) 2 SCC 1 has held that the grounds of detention are required to be communicated to the detenu. If the bail application and bail order which are the vital material documents are not supplied to the detenu and not considered by the detaining authority it would be violative of Article 22 (5) of the Constitution of India and continued detention would be illegal. When a similar question arose before this court in the case of Rameshbhai Maganbhai Nayaka vs. Commissioner of Police, Surat City and others - 32 (1) [1991](1) G.L.R. 31, referring the above stated decision of the Supreme Court, it is held that if the detenu had preferred the bail application in the cases registered against him and was released on bail, the bail application and order passed and other vital materials thereof are required to be placed by the sponsoring authority before the detaining authority, and if that is not done the detenu does not get a proper opportunity to submit his case which is in violation of Article 22 (5) of the Constitution of India and therefore the detention order if passed has to be quashed. In view of such law made clear by the Apex Court as well as this court, it was incumbent upon the authority passing the detention order to furnish necessary bail papers namely bail application, bail order and other relevant papers qua the Crime Register No. 227/96 to the petitioner so that he could make effective representation after proper study.

On query it was submitted on behalf of the other side that no doubt all the papers were supplied to the petitioner, but the bail application or the copy of the bail application was not supplied. It is also submitted that the bail application was not placed before the detaining authority by the sponsoring authority. Thus it becomes clear that the petitioner did not get the reasonable opportunity to submit his case and his right to make effective representation was marred. In view of the fact, the order of petitioner's detention in the present case is vitiated and the same can be termed arbitrary. In the result, the same is required to be quashed.

6. With the result, the petition is allowed and the order detaining the petitioner is held unconstitutional & illegal. It is therefore quashed. The petitioner be released forthwith if no longer required in any other case. Rule accordingly made absolute.

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